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EX PARTE OR LATE FILED

December 8, 1999

BY HAND

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Re: Application of Bell Atlantic Pursuant To Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295

Dear Ms. Salas:

On December 7, 1999, Michael Olsen, Deputy General Counsel, NorthPoint Communications, Inc. ("NorthPoint"), Doug Garrett, Vice President of LEC Relations, NorthPoint and Ruth Milkman, Lawler, Metzger and Milkman, LLC, counsel to NorthPoint, met with Kyle Dixon, Legal Advisor to Commissioner Powell to present the enclosed material regarding issues pending before the Commission in the above-referenced proceeding.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and two copies of this letter and enclosure are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Ruth Milkman

cc: Kyle Dixon
Andrea Kearney
Julie Patterson
Michelle Carey
Dee May

Bell Atlantic – New York 271 Application
DSL Loop Provisioning

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NorthPoint

BA-NY's unsatisfactory performance on provisioning DSL loops is widely acknowledged

- New York Public Service Commission:

  "Bell Atlantic-NY's performance in providing xDSL compatible loops must be improved, but improvements are being made." (NYPSC Evaluation – Reply at p.3)

- United States Dept. of Justice:

  "Bell Atlantic has not yet demonstrated that it can adequately provide access to unbundled local loops, either for traditional voice services or for digital subscriber line ("DSL") technology used to provide a variety of advanced services....These remaining problems are few in number, but they will impose a significant constraint on competition if they are not adequately resolved." (DOJ Evaluation at p.2-3)

- NorthPoint Communications:

  "Since NorthPoint began joint testing with Bell Atlantic on September 20, 1999, Bell Atlantic has only called on 40% of all NorthPoint orders." (NP Comments at 21)

BA-NY has "assured" the Commission that its on-time performance *will* improve as a result of joint-testing and related workarounds

- BA-NY:

  "As with any new service offering, there were problems provisioning DSL services during the first months in which this new and complicated service was deployed. BA-NY has worked through the provisioning process jointly with the CLECs and under the supervision of the New York Public Service Commission. Under the new processes and procedures, BA-NY performance is good and continues to improve." (BA-NY, Lacouture/Troy Reply Declaration at ¶80)

- New York Public Service Commission:

  "We are *optimistic* that the attention focused on xDSL provisioning [in the DSL Collaborative meetings] *will resolve many of the outstanding issues.*" (NYPSC Evaluation at p. 94)

- United States Dept. of Justice:

  "There is reason to believe that these remaining [DSL loop] problems *can* be solved in a short time, and Bell Atlantic, commendably, appears to have taken or committed to take action to do so" (DOJ comment at 2-3)

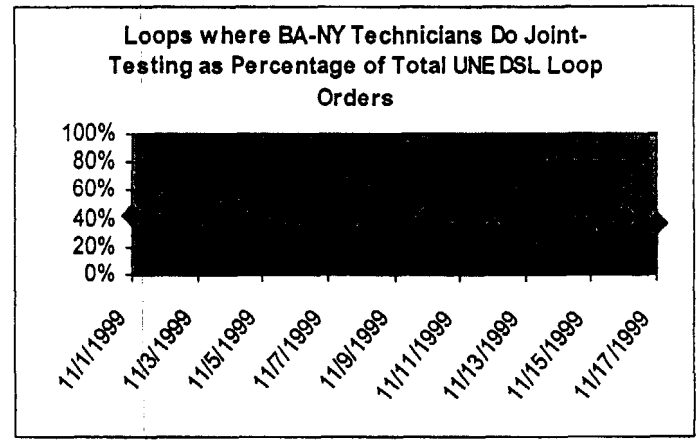
- NorthPoint Communications:

  "Although NorthPoint remains optimistic that the joint testing process will resolve at least some of the problems associated with Bell Atlantic's DSL loop provisioning, initial data shows that the process has not yet significantly improved Bell Atlantic's performance." (NorthPoint Comments at p.21)

BA-NY's provisioning performance has <u>not improved</u> since its filing with this Commission

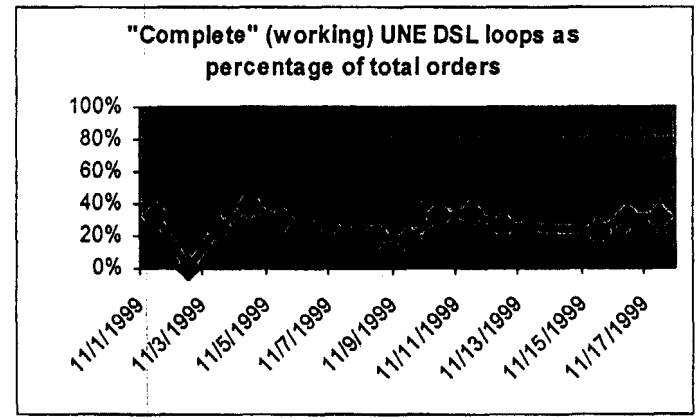
- Joint testing:

  *<u>BA-NY **fails** to joint test more than 50% of total orders:</u>*



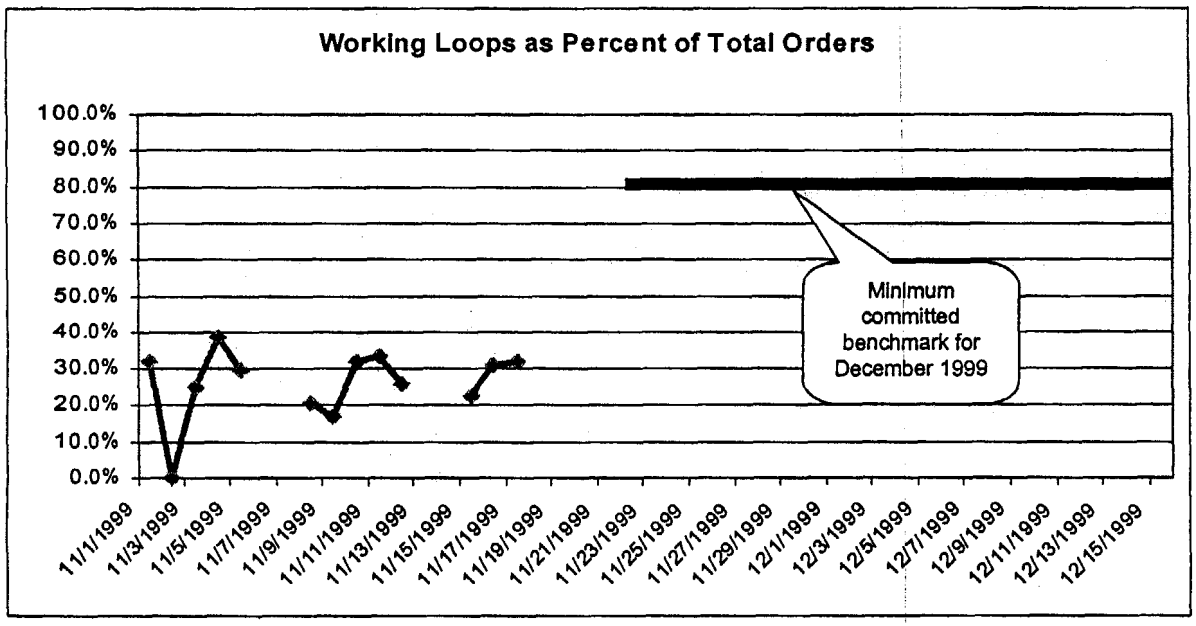
- Total Loop completions:

*<u>Working loops delivered on-time **less than** 26% of total orders:</u>*



BA-NY's commitment to improve on-time provisioning to 80% for December is a *minimum* benchmark for 271 showing on provisioning

- Failure to meet committed threshold requires FCC rejection of application under section 271(c)(2)(B)(iv) (Loops)



NorthPoint

BA-NY's systems and provisioning are insufficient to meet current and foreseeable demand

- OSS must support equally all three modes of entry (*Ameritech MI*, ¶ 133) but BA-NY systems favor platform, resale by denying DSL loop flow-through
- BA-NY fails to provide analogous preordering functionality for DSL loops by denying CLECs access to real time pre-qualification information sufficient to provision DSL loops. (*See Ameritech MI* at 140, *BellSouth SC* at 148)
  - DSL CLECs must wait 24-72 hours for loop information releveant to non-BA-NY DSL loops (more complete loop data as requirement clarified in *UNE Remand* at 428)
  - BA-NY has to load even *minimum* BA-specific loop data in all CLEC C.O.'s
  - "We cannot conclude ... that BA-NY is currently providing adequate access to preordering informatino needed to provide DSL services." (DOJ at 26)
- BA-NY ordering systems deny an efficient competitor a "meaningful opportunity to compete" (*Ameritech MI* at 141)
  - BA-NY discriminates against DSL CLECs by denying order status, confirmation, installation commitments for 24-72 hours at a minumum
  - BA-NY gives retail customers *instant* order confirmation, installation commitments - disparity in its own, vs. competitors access is competitively significant from a subscriber's perspective
  - BA-NY has *no process* for alerting DSL CLECs of potential failed intalls (jeopardies) as required by Commission (*BellSouth LA* at 131)
  - Current systems, provisioning procedures cannot satisfy current or expected demand. (See DOJ at 26)

Summary of Errors in BANY Reply Declarations

Lacouture/Troy (BA) reply claim	Actual
BA-NY provisioned more than 90 percent of CLEC orders for ADSL loops on time during the months of August and September (¶ 73)	BA-NY's success in provisioning DSL capable loops on time to Data CLECs remains below 40% if a completed loop is defined as a "working loop". Measures, such as joint-testing, that are intended to improve BA-NY's ability to provision working loops, have not yet been fully implemented. Bell Atlantic technicians in New York joint-test less than 40% of the loops that are designated for joint-testing calls. Bell Atlantic's <40% performance compares unfavorably to other ILEC provisioning rates, such as Pacific Bell (approx 80%) and Ameritech (approx. 70%)
During August and September 1999, the average installation interval for competitive ADSL loops was 7.5 days, which is nearly identical to the average interval of 7.4 days for BA-NY's retail ADSL service (¶73)	First, the Commission has clarified in prior §271 Opinions that ordering UNEs does not have a retail analog. Thus, by definition, there is no BA-NY retail product to which a parity analysis could apply. Further illustrating this point, BA-NY's retail ADSL services are only provisioned on shared lines, typically with existing (working) analog voice services. In contrast, DSL CLECs currently must provide DSL services on "new" loops, untested by analog voice services. Second, BA-NY is contractually obligated to provision UNE DSL loops within five (5) days. Third, DSL CLECs should not be held to a lesser standard set by BA-NY's own anemic retail DSL offering.
"The [NYPSC] has certified that BA-NY meets this checklist requirement [loops] and found that BA-NY 'has put in place the procedures and training ...to provide xDSL-capable loops..." (¶76, citing NYPSC Comments at 99).	The declarants neglected to include the remainder of the quote from the NYPSC (highlighted in yellow), which illustrates the NYPSC's concern with BA-NY ability to support competitive DSL services: "Bell Atlantic-NY has put in place the procedures and training ...to provide xDSL-capable loops, and to minimize provisioning postponements and local service request

Lacouture/Troy (BA) reply claim	Actual
	confirmation delays and inaccuracies due to Bell Atlantic-NY process problems."
"[In August and September 1999], BA-NY returned confirmations on ADSL loop orders within an average of 65 hours, which is below the target of 72 hours." (¶87)	Although BA-NY provided NorthPoint no data for September 1999, BA-NY's own reported performance data for August 1999 states that BA-NY's order confirmations to NorthPoint took on average 290.37 hours. In addition, even if BA-NY were to meet its "target of 72 hours," the parity obligation for retail analogs, such as order confirmations, requires NorthPoint to receive order confirmations within a matter of seconds or minutes, not days.
Within the next two months, 93 percent of BA-NY's central offices now with collocation or now subject to pending collocation orders will be surveyed and these offices will provide CLECs with access to 90 percent of BA-NY's lines. (¶75)	Bell Atlantic's plans to survey news offices for the implementation of its own retail ADSL loop qualification database is not sufficient to meet the needs of DSL CLECs. Loop makeup information must include the robust loop data required to provide competitive services. *See* Third Report and Order, *In the matter of Implementation of Local Competition etc.* ("UNE remand"), CC Docket 96-98 at ¶ 427-28 (9/15/99)
"BA-NY provides demarcation information to NorthPoint and other CLECs when it completes the cooperative testing process." (¶97)	While this statement is technically accurate, it is misleading because it does not acknowledge that BA-NY has only cooperatively tested on less than 40% of all NorthPoint DSL loop orders since the procedure was to be fully implemented September 15, 1999.
[NorthPoint] complains that BA-NY's loop qualification database often rejects addresses that have been validated by BA's preordering OSS." (¶106) [¶] "...CLECs do not need to use address information to access the database. BA-NY recommends that they can use telephone numbers instead." (¶107).	Use of a telephone number, as with a validated address, often does not work.
BA makes these alternative [ISDN-type long length] loops available to CLECs [for the provision of DSL services through DLCs.] (¶ 78)	Data CLECs use ISDN loops to provide IDSL services to consumers served through DLCs. BA does not "de-channelize" the ISDN port cards – as other ILECs do – in order to facilitate the delivery of 140mbps services to these customers. *Cf., UNE Remand at ¶ 172-73* (ILEC must condition loops per CLEC requirements). BA's failure to de-channelize ISDN loops limits the quality and reach of

Lacouture/Troy (BA) reply claim	Actual
	competitive advanced services.
NorthPoint [and others] claim that a substantial number of DSL loops provisioned by BA-NY do not work properly [] These concerns were addressed before BA-NY filed this application. (¶81)	BA continues to fail to complete loops due to the failure to complete cross connects, provide critical demarc information, or to complete required field work. Parties have sought to address these failures by implementing joint testing, but this process has failed to markedly improve BA performance.
Through October 15, BA-NY has provisioned 824 DSL loops under the new process and has received only 21 repair orders for those loops – a success rate of over 97 percent. (¶82)	BA's references to "trouble tickets" as evidence of its provisioning success is misleading, as BA has *specifically instructed* DSL CLECs not to issue trouble tickets on these loops but rather to keep all loop provisioning failures within the installation/provisioning team. Thus, the absence of a volume of "trouble tickets" relating to DSL loops is not indicative of provisioning success.
BA-NY's on time completion performance for ADSL loops for the months of August and September was above 90 percent. (¶87)	This statistic does not represent DSL CLEC's experience, where BA on-time provisioning rates for November was less than 30%
During September, BA-NY's on time performance for DSL loops was 97%. (¶93)	See Above.
BA claims that it has no obligation to make available to DSL CLECs loop makeup data except that which is made available to its own retail representatives and that DSL CLEC complaints in this regard have "no relevance" to is application to provide Inter-LATA services. (¶ 97-102, 105)	The *UNE remand* clarifies that OSS loop makeup data must include relevant loop data regardless whether the ILEC makes it available to its retail representatives. *UNE Remand* at ¶ 428. Mr. Lacouture's claim that *all* of this information is not contained in a single electronic database (¶ 101) is irrelevant and misleading; the question is whether *any* of it is available, and whether BA makes it available to CLECs (it does not).